

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: LAWRENCE

Application Serial No.: 10/713,421

Filing Date: November 14, 2003

For: INDEPENDENT RESEARCH
CONSENSUS EARNINGS
ESTIMATES AND METHODS OF
DETERMINING SUCH

) Confirmation No.: 2738

) Group Art Unit: 3691

) Examiner: Alan Y. Liu

) **APPEAL BRIEF**

) Attorney Docket No.: G08.146/U

) **PTO Customer Number 28062**
) Buckley, Maschoff & Talwalkar LLC
) 50 Locust Avenue
) New Canaan, CT 06840

Mail Stop Appeal Brief – Patents (via EFS)
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in the Final Office Action mailed March 18, 2008 (the "Final Office Action"), rejecting claims 1-9, 11-20, 23 and 24.

REAL PARTY IN INTEREST

The present application is assigned to GOLDMAN SACHS & CO., One New York Plaza, New York, New York 10004, U.S.A.

RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to Appellant, Appellant's legal representative, or assignee, which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-9, 11-20, 23 and 24 are pending in this application. All pending claims stand rejected and are now being appealed.

Claims 10, 21 and 22 have previously been canceled.

STATUS OF AMENDMENTS

No amendments were filed after the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

In the field of corporate finance, it is common for financial institutions to employ research analysts who follow the performance and financial results of companies that issue securities. (Specification, page 1, lines 13-18) Typically, research analysts who follow a particular company issue estimates of the per-share earnings they expect the company to report for the next calendar quarter. (Specification, page 1, lines 16-18) It has also proven to be useful to generate a "consensus" quarterly earnings estimate for a company, based on the individual estimates produced by the analysts who follow the company. (Specification, page 1, lines 19-22)

Questions have been raised about whether the work of research analysts may be improperly influenced by relationships between the companies they follow and the financial institutions that employ the analysts. (Specification, page 1, line 23 to page 2, line 7) The present inventor has recognized that there is a potential for the reliability or perceived reliability of a consensus earnings estimate to be adversely affected if the consensus earnings estimate is based on individual estimates from analysts whose employers have relationships with the company in question. (Specification, page 2, lines 7-16.)

According to aspects of the present invention, data gathering techniques may be employed to determine whether there are business relationships between the company in question and financial institutions. (Specification, page 4, lines 6-12) If so, the consensus earnings estimate for the company may be generated in a manner which excludes individual estimates from the financial institutions that have a business relationship with the company. (Specification, page 4, lines 2-4; page 6, line 26 to page 7, line 5) According to another aspect, notice may be provided to a financial institution that its estimate has been excluded from the consensus estimate, so that the excluded entity has an opportunity to address the exclusion. (Specification, page 7, lines 25-27)

* * * * *

Appellant will now map the limitations of the pending independent claims to the disclosure of this application. Appellant will also map the limitations of dependent claims 23 and 24 to the disclosure of this application, since separate arguments are submitted herein for claims 23 and 24.

* * * * *

Claim 1

“A computerized apparatus for managing risk associated with earnings estimates for a company”—FIG. 2, risk management clearinghouse system 202 and earnings reporting controller 203; specification, page 5, lines 5-7 and 23-25.

“A computer server comprising a processor and a digital storage and accessible with a system access device via a communications network”—FIG. 6, item 120; specification, page 8, lines 19-26.

“Executable software stored on the computer server and executable on demand, the executable software operative with the processor to cause the computer server to”—FIG. 6, program 615; specification, page 9, lines 4-6.

“Receive into the digital storage data descriptive of multiple earnings estimates, each earnings estimate generated by a respective bank”—specification, page 6, lines 20-23.

“Receive into the digital storage data indicative of one or more business relationships comprising a bank and the company”—specification, page 6, lines 24-25.

“Generate a first consensus estimate excluding earnings estimates received from the bank with the data indicative of one or more business relationships with the company”—specification, page 6, line 26 to page 7, line 1.

“Transmit, to the bank, data comprising a message that the bank’s earnings estimate is excluded from the first consensus estimate”—specification, page 7, lines 25-27.

“Generate a suggested action based upon the first consensus estimate”—specification, page 7, lines 6-7.

Claim 12

“A method for managing risk associated with earnings estimates for a company”—specification, page 3, lines 4-5.

“Receiving digital data descriptive of multiple earnings estimates into a computer storage”—specification, page 6, lines 20-23.

“Receiving digital data descriptive of one or more indications of a bank conducting business with the company into a computer storage”—specification, page 6, lines 24-25.

“Generating a first consensus estimate based upon the digital data descriptive of the multiple earnings estimates received and comprising the data descriptive of an earnings estimate generated by the bank conducting business with the company”—specification, page 3, lines 23-24.

“Generating a second consensus estimate based upon the digital data descriptive of the multiple earnings estimates received and excluding the data descriptive of earnings estimates generated by the bank conducting business with the company”—specification, page 6, line 26 to page 7, line 1.

“Transmitting, to the bank, data comprising a message that the bank’s earnings estimate is excluded from the first consensus estimate”-- specification, page 7, lines 25-27.

“Generating an indication in human readable form of a suggested action based upon the first consensus estimate and the second consensus estimate”— specification, page 7, lines 6-7.

Claim 20

“Computer executable program code residing on a computer-readable medium, the program code comprising instructions for causing the computer to”-- FIG. 6, program 615; specification, page 9, lines 4-6.

“Receive multiple earnings estimates related to a company”--specification, page 6, lines 20-23.

“Receive one or more indications of a bank conducting business with the company”— specification, page 6, lines 24-25.

“Generate a first consensus estimate based upon the earnings estimates received”— specification, page 3, lines 23-24.

“Generate a second consensus estimate based upon the earnings estimates received, but excluding an earnings estimate received from the bank conducting business with the company”— specification, page 6, line 26 to page 7, line 1.

“Transmit, to the bank, data comprising a message that the bank’s earnings estimate is excluded from the first consensus estimate”-- specification, page 7, lines 25-27.

“Generate a suggested action based upon the first consensus estimate and the second consensus estimate”— specification, page 7, lines 6-7.

Claim 23 (dependent on claim 1, also argued separately)

“The earnings estimates received from the bank are excluded based on the bank being involved in a threshold amount of business with the company”—specification, page 7, lines 3-5.

Claim 24 (dependent on claim 1, also argued separately)

“The earnings estimates received from the bank are excluded based on the bank being involved over a threshold amount of time in a business relationship with the company”-- specification, page 7, lines 3-5.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

(1) Claims 1-5, 9, 11-15, 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gatto (U.S. Patent No. 6,681,211) in view of Jessop (U.S. patent publication 2003/0046095) and further in view of an article by Jon Birger entitled “Why Analysts Still Matter”, and still further in view of McConnell (U.S. Patent No. 6,882,850).

(2) Claims 23 and 24 are rejected under 35 U.S.C. § 103(a) under the same references listed in the preceding paragraph, and further in view of Ilnicki (U.S. Patent No. 7,069,434).^{1,2}

ARGUMENT

I. Applicable Law

All of the issues in this appeal are related to rejections under 35 U.S.C. § 103(a). In these rejections, the Examiner found the claims at issue to be obvious in view of a proposed combination of references.

¹ In fact, the actual statement of the rejection of claims 23 and 24 does not explicitly mention the McConnell reference, but this is believed to be an oversight on the Examiner’s part, since (a) claims 23 and 24 are dependent on claim 1, and (b) the Examiner evidently intended to apply the same rejection as he applied to claim 1 “plus” the Ilnicki reference.

² The Final Office Action also states rejections under § 103(a) with respect to dependent claims 6-8 and 16-18, but these rejections are not believed to raise any issues that require discussion herein, inasmuch as appellant is content to have claims 6-8 and 16-18 stand or fall with claim 1 and the other independent claims.

The recent Supreme Court decision in *KSR Int'l Co. v. Teleflex Inc.*³ is now the leading case on the concept of obviousness. Quoting the statute, the Court observed that a patent may not be issued when

the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.⁴

The Court went on to note that “the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results”.⁵

Addressing situations in which

the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement ... [,]

the Court prescribed:

Often, it will be necessary for a court [or patent examiner] to look to interrelated teachings of multiple patents; the effects of demands known to the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was some apparent reason to combine the known elements in the fashion claimed

... [I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.⁶

³ 127 S.Ct. 1729, 82 USPQ2d 1385 (2007)

⁴ Slip opinion, at pp. 1-2.

⁵ Slip opinion, at p. 12.

⁶ Slip opinion, at pp. 14-15.

II. The pending claims are not obvious in view of the references relied upon by the Examiner.

Claim 1 is taken as exemplary of all of the pending claims.⁷

While the Examiner has found all of the limitations of claim 1 in the prior art—or has come fairly close to doing so—it is appellant’s main contention that the Examiner has failed to provide a proper rationale for combining the individual teachings of the references so as to arrive at the claimed invention.

More specifically, appellant contends that (A) there is no proper basis⁸ for combining the McConnell reference with the other three references, and (B) there is no proper basis for combining the first three references together, as the Examiner proposes. Rather, the Examiner has improperly relied on hindsight knowledge derived from appellant’s own teachings to string the references together in a simulacrum of appellant’s invention.

Appellant will now dissect the rejection of claim 1 in detail, (a) discussing in turn each reference relied upon by the Examiner, (b) recounting which claim limitations the Examiner finds or purports to find in each reference, and (c) pointing out how the Examiners’ reasoning is (i) flawed, (ii) improperly appropriates the appellant’s teachings to arrive at his conclusion of obviousness, and (iii) lacks the “glue” required under the *KSR* case to properly combine the references.

The Gatto reference

This is the primary reference, and is concerned with a computer system that allows for generating consensus and composite earnings estimates based on earnings estimates from individual analysts.⁹ The composite earnings estimates may exclude individual analyst estimates for various reasons, such as lack of timeliness of the individual estimate, or the analyst’s lack of experience in covering the company in question.¹⁰ Individual analysts’ estimates may also be

⁷ Appellant proposes that all of the claims stand or fall together, except that claims 23 and 24, which are argued separately below, should be held patentable even if the other claims are not.

⁸ In the terms of the *KSR* case, there is no “apparent reason”... .

⁹ Gatto: Abstract; column 17, lines 10-12.

¹⁰ Gatto: Column 17, lines 5-12.

excluded from the composite estimate if they tend to be less accurate than the consensus estimate. This exclusion is based on what Gatto refers to as “bias error”, which is a statistical indication of the relative inaccuracy of an individual analyst’s estimates over time.¹¹

The Examiner reasonably relies on Gatto as disclosing the structural aspects of claim 1, namely the computer server, processor, digital storage and executable software.¹² The Examiner also reasonably relies on Gatto as disclosing certain of the functions recited in claim 1, namely receiving earnings estimates, and generating a suggested action.¹³

The Examiner correctly refrains from asserting the Gatto discloses all of the claimed function of “generat[ing] a first consensus estimate excluding earnings estimates received from the bank with the data indicative of one or more business relationships with the company”. However, the Examiner relies on Gatto as teaching a portion of this function, namely generating a consensus estimate with some individual estimates excluded.¹⁴ In other words, the Examiner (correctly in appellant’s view) finds that Gatto discloses excluding earnings estimates from a consensus estimate, but for reasons different from the reason set forth in claim 1. As will be seen, appellant believes that the Examiner errs in purporting to find support in the prior art for modifying Gatto to incorporate therein the reason for excluding an earnings estimate stated in claim 1 (i.e., excluding an estimate sourced from a bank with a business relationship with the company in question).

The Jessop reference

This reference discloses a system for displaying relationships among corporate entities.¹⁵

¹¹ Gatto: Column 39, lines 8-37.

¹² Final Office Action: Page 3, second and third paragraphs.

¹³ Final Office Action: Page 3, fourth and last paragraphs.

¹⁴ Final Office Action: Page 3, fifth paragraph.

¹⁵ Jessop: FIGS. 2 and 4 (e.g.) and paragraphs 0029 and 0032.

A primary purpose for displaying such relationships is for developing new financial products.¹⁶

The Examiner relies on Jessop as disclosing the functional limitation of claim 1 related to “receiv[ing] data indicative of one or more business relationships comprising a bank and a company”.¹⁷ While this is true as far as it goes, appellants contend that the only reason given by the Examiner for incorporating this feature in the apparatus of claim 1 is supplied by the appellant’s own teachings, and not by any teaching present in the prior art.

The McConnell reference

This reference is concerned with telecommunications systems¹⁸, and not with the field of corporate finance. The more particular field of endeavor for this reference is managing capacity in a communication system.¹⁹

The Examiner relies on a feature of McConnell’s system in which (a) the system removes a communication system subscriber from access to the system when the number of subscribers in a zone exceeds a threshold number²⁰, and (b) notifies an originating subscriber about the exclusion of the other subscribers.²¹ The Examiner evidently considered this teaching adequate to supply the claim limitation of “transmit[ting], to the bank, ... a message that the bank’s estimate is excluded from the first consensus estimate”.²² As appellant will explain in detail below, there are at least three reasons why the McConnell reference fails to support the Examiner’s reliance thereon.

¹⁶ Jessop: Paragraph 0006.

¹⁷ Final Office Action: Page 4, lines 13-17.

¹⁸ McConnell: Column 1, lines 8-10.

¹⁹ Ibid.

²⁰ McConnell: Column 9, lines 25-67.

²¹ McConnell: Column 10, lines 1-32.

²² Final Office Action: Page 6, lines 9-16.

The Birger article

The Examiner relies on Birger for its teaching that the accuracy of analysts' estimates has apparently in some cases been compromised as a result of relationships their employers had with the companies covered by the analysts.²³ The Examiner thus does not rely on Birger as supplying any particular element of claim 1, but rather considers it to be the "glue" to justify combining the Gatto and Jessop references, and a reason to modify Gatto such that an earnings estimate is to be excluded from a consensus estimate based on a relationship between the company in question and the source of the estimate.

For reasons set forth below, appellant contends that the teachings of Birger do not support the weight the Examiner places upon them.

--The McConnell reference is insufficient to satisfy the claim limitation of notifying a bank that its earnings estimate has been excluded from a consensus estimate.

There are at least three reasons why the teachings of McConnell fails to properly supply the limitation of claim 1 that calls for sending a message to a bank to indicate that its earnings estimate is excluded from a consensus earnings estimate.

First of all, the McConnell reference is in a completely different field of endeavor from that of the present invention and of the Gatto and Jessop reference. The present invention, Gatto and Jessop are all concerned with corporate finance, whereas McConnell relates to telecommunication systems. A person of ordinary skill in the field of corporate finance would have no reason to consider teachings in the field of telecommunications systems as included in the McConnell reference.²⁴

Secondly, even if McConnell could be considered pertinent to problems presented in the field of corporate finance, there is nothing about McConnell's teaching about a notification that

²³ Final Office Action: Page 4, last paragraph.

²⁴ In the Advisory Action issued herein on June 12, 2008, the Examiner postulates that McConnell and the present application are in the common field of "transmitting a message regarding an exclusion". In response to this canard, appellant respectfully observes that there is no such field of endeavor as sending messages about exclusions. This is just an attempt on the Examiner's part to concoct a category that could conceivably encompass the fundamental differences between the claimed invention and McConnell's teachings. In any case, how does an "exclusion message" bear any relation to the subject matter of the other two references, namely Gatto and Jessop? Simply by positing this bogus "field of endeavor" the Examiner is engaging in an improper exercise in hindsight. The Examiner is in the all too familiar role of playing word games rather than addressing the substantive differences between the claimed invention and the teachings of the prior art.

users of a communication system have been excluded therefrom that would lead a person of ordinary skill to consider it necessary or advisable to inform a bank that its earnings estimate has been excluded from a consensus earnings estimate. The benefits of the former type of notification have no bearing on the situation which arises when an earnings estimate is excluded from a consensus earnings estimate.

Finally, there is a further narrow and technical but still significant difference between the advisement of exclusion in McConnell versus the claimed message to the bank recited in claim 1. That is, in McConnell the system notifies a subscriber other than the excluded subscribers that the latter have been excluded. That is, the excluded subscribers are not themselves notified in McConnell's system.²⁵ By contrast, in claim 1, the party informed of the exclusion of the earnings estimate is the same party that was the source of the earnings estimate. Thus, even if Examiner's tinker-toy reassembly of a simulation of claim 1 were considered proper, it still would fail to arrive at the claimed invention, by lacking the final "piece" which corresponds to the message sent to a bank that its own earnings estimate was excluded.

Accordingly, appellant respectfully submits that the McConnell reference is, on several levels, inadequate to supply the claim limitation of transmitting to a bank a message that the bank's earnings estimate is excluded from a consensus earnings estimate. It follows that the Examiner has failed to present a *prima facie* case of obviousness with respect to claim 1, and that the rejection of claim 1 should be reconsidered and withdrawn.

--The proposed modification of Gatto's system is based improperly on hindsight knowledge from the appellant's own invention, and not on the prior art.

As noted above, the Examiner has proposed to modify Gatto's system and incorporate therein Jessop's teachings about tracking relationships among companies, both based on teachings in the Birger article that analysts' earnings estimates may be affected by relationships between their employers and the companies they analyze.

One point that is worth noting is that Birger's teachings in this respect do not go beyond

²⁵ McConnell: Column 10, lines 22-32.

what the present application itself presents as a known problem.²⁶ But the present application goes on to supply teaching that is not found in Birger, namely that questions about the reliability of consensus estimates may be assuaged by excluding therefrom estimates that may have been influenced by business relationships.²⁷ This “missing link” in the Examiner’s chain of reasoning appears to have been supplied from appellant’s own teachings and not from the Birger reference.

Appellant will now quote the key statement by the Examiner as to his rationale for modifying Gatto and combining that reference with Jessop:

From these teachings of Jessop et al. and Birger, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the computerized apparatus of Gatto to include the relationship information database as taught by Jessop et al. in order to track the relationships between companies and identification of bias based on business relationships as taught by Birger in order to see the effect that potentially biased earnings estimates may have on a consensus estimate.²⁸

The underlined statement, which is the reason given for the proposed combination and modification of references is not based on any disclosure in the Birger article. Rather, it is a virtual paraphrase of teachings of the present application. Note, for example, this statement from the present application: “Consensus estimates can then be provided in a meaningful manner devoid of any real or imagined influence arising from such relationships.”²⁹ In other words, the reason given by the Examiner for arriving at the proposed combination of references and modification of the primary reference is derived from the applicant’s own teachings and was not gleaned from the teachings of the prior art. This presents another reason why the rejection of claim 1 should be reversed by this Honorable Board.

²⁶ See, for example, page 2, lines 5-7 of the specification of this application:

“Arguments have been advanced that analysts provide earnings estimates and other subjective data for reasons that may be influenced by business relationships, such as investment banking activity, with the company.”

²⁷ Specification of the present application, at page 2, lines 7-16.

²⁸ Final Office Action: page 5, lines 5-10; emphasis added.

²⁹ This statement appears at page 2, lines 15-16 of the specification of this application.

III. Separate argument in support of patentability of claim 23

Claim 23 is dependent on claim 1, and so should be held patentable on the same basis as claim 1. However, claim 23 also recites a limitation that supports an additional ground for patentability of claim 23.

The additional limitation recited in claim 23 is “the earnings estimates received from the bank are excluded based on the bank being involved in a threshold amount of business with the company”. The Examiner relied upon the Ilnicki reference as allegedly supplying this feature. However, Ilnicki actually only teaches, at most, providing favorable treatment to a client based on the amount of business done with the client.³⁰ This teaching would not suggest that the determination of whether to exclude a bank’s earnings estimate from a consensus estimate should be based on the amount of business the bank does with the company in question. In effect, this is the opposite of providing favorable treatment to the bank.

IV. Separate argument in support of patentability of claim 24

Claim 24 is dependent on claim 1, and so should be held patentable on the same basis as claim 1. However, claim 24 also recites a limitation that supports an additional ground for patentability of claim 24.

The additional limitation recited in claim 24 is “the earnings estimates received from the bank are excluded based on the bank being involved over a threshold amount of time in a business relationship with the company”. Again the Examiner relied on the Ilnicki reference as allegedly supplying this feature, and again the reference fails to support the Examiner’s reliance thereon. At most, Ilnicki teaches providing favorable treatment to a client based on the length of the business relationship with the client.³¹ This teaching would not suggest that the determination of whether to exclude a bank’s earnings estimates from a consensus estimate should be based on length of business relationship. As noted above, this is the opposite of providing favorable treatment to the bank.

³⁰ Ilnicki: Column 1, lines 41-45.

³¹ Ibid.

CONCLUSION

The Examiner has failed to provide a proper *prima facie* case of obviousness with respect to claim 1 or the other independent claims. The rejection of claims 23 and 24 is also improper. The Examiner's decision should therefore be reversed.

As required by 37 CFR §41.37(a)(1), this Brief is filed within two months from the date of filing of Appellant's Notice of Appeal (*i.e.*, within two months of June 18, 2008); as such, no extension of time is believed due. Also, the requisite fee for filing an Appeal Brief is submitted herewith. However, if any additional fees are due in conjunction with this matter, the Commissioner is hereby authorized to charge them to Deposit Account 50-1852. An Appendix of claims involved in this appeal is attached hereto.

If any issues remain, or if the Examiner or the Board has any further suggestions for expediting allowance of the present application, kindly contact the undersigned using the information provided below.

Respectfully submitted,

August 11, 2008
Date

/Nathaniel Levin/
Nathaniel Levin
Registration No. 34,860
Buckley, Maschoff & Talwalkar LLC
50 Locust Avenue
New Canaan, CT 06840
(203) 972-3460

APPENDIX A--CLAIMS

1. A computerized apparatus for managing risk associated with earnings estimates for a company, the apparatus comprising:

a computer server comprising a processor and a digital storage and accessible with a system access device via a communications network; and

executable software stored on the computer server and executable on demand, the executable software operative with the processor to cause the computer server to:

receive into the digital storage data descriptive of multiple earnings estimates, each earnings estimate generated by a respective bank;

receive into the digital storage data indicative of one or more business relationships comprising a bank and the company;

generate a first consensus estimate excluding earnings estimates received from the bank with the data indicative of one or more business relationships with the company;

transmit, to the bank, data comprising a message that the bank's earnings estimate is excluded from the first consensus estimate; and

generate a suggested action based upon the first consensus estimate.

2. The computerized apparatus of claim 1 wherein the executable software is additionally operative with the processor to cause the computer server to:

generate a second consensus estimate based upon the earnings estimates received, including the earnings estimates received from the bank with the data indicative of one or more business relationships with the company; and

generate the suggested action based upon the first consensus estimate and the second consensus estimate.

3. The computerized apparatus of claim 1 wherein the executable software is additionally operative with the processor to cause the computer server to:

generate a marker to correlate with the existence of data indicative of one or more business relationships comprising the bank and the company.

4. The computerized apparatus of claim 1 wherein the executable software is additionally operative with the processor to cause the computer server to:

receive a request data relating to a business relationship between the bank and the company.

5. The computerized apparatus of claim 1 wherein the suggested action comprises acquiring a security instrument for the company.

6. The computerized apparatus of claim 1 wherein the suggested action comprises acquiring a derivative which will be profitable if a price of a stock for the company declines within a predetermined period.

7. The computerized apparatus of claim 1 wherein the suggested action comprises acquiring a derivative which will be profitable if a price of a stock for the company increases within a predetermined period.

8. The computerized apparatus of claim 6 or 7 wherein the predetermined period comprises 30 days following an announcement of company earnings.

9. The computerized apparatus of claim 1 wherein the executable software is additionally operative with the processor to cause the computer server to:

receive updated information relating to the one or more business relationships and generate a modified suggested action based upon the updated information.

10. (canceled)

11. The computerized apparatus of claim 1 wherein the executable software is additionally operative with the processor to cause the computer server to transmit data comprising a reason for the exclusion of the earnings estimate from the consensus estimate.

12. A method for managing risk associated with earnings estimates for a company, the method comprising:

receiving digital data descriptive of multiple earnings estimates into a computer storage;
receiving digital data descriptive of one or more indications of a bank conducting business with the company into a computer storage;

generating a first consensus estimate based upon the digital data descriptive of the multiple earnings estimates received and comprising the data descriptive of an earnings estimate generated by the bank conducting business with the company;

generating a second consensus estimate based upon the digital data descriptive of the multiple earnings estimates received and excluding the data descriptive of earnings estimates generated by the bank conducting business with the company;

transmitting, to the bank, data comprising a message that the bank's earnings estimate is excluded from the first consensus estimate; and

generating an indication in human readable form of a suggested action based upon the first consensus estimate and the second consensus estimate.

13. The method of claim 12 additionally comprising the step of:
generating digital data indicative of a business relationship between a bank and the company.

14. The method of claim 13 additionally comprising the step of receiving a request for data descriptive of the business conducted comprising the bank and the company.

15. The method of claim 12 wherein the suggested action comprises acquiring a security for the company.

16. The method of claim 12 wherein the suggested action comprises acquiring a derivative which will be profitable if a price of a stock for the company declines within a predetermined period.

17. The method of claim 12 wherein the suggested action comprises acquiring a derivative which will be profitable if a price of a stock for the company increases within a predetermined period.

18. The method of claim 16 or 17 wherein the predetermined period comprises days following an announcement of company earnings.

19. The method of claim 12 additionally comprising generating digital data comprising a message that the earnings estimate generated by the bank will be excluded from the calculation of the second consensus estimate and a reason for the exclusion.

20. Computer executable program code residing on a computer-readable medium, the program code comprising instructions for causing the computer to:

receive multiple earnings estimates related to a company;
receive one or more indications of a bank conducting business with the company;

generate a first consensus estimate based upon the earnings estimates received;

generate a second consensus estimate based upon the earnings estimates received, but excluding an earnings estimate received from the bank conducting business with the company;

transmit, to the bank, data comprising a message that the bank's earnings estimate is excluded from the first consensus estimate; and

generate a suggested action based upon the first consensus estimate and the second consensus estimate.

21-22. (canceled)

23. The apparatus of claim 1, wherein the earnings estimates received from the bank are excluded based on the bank being involved in a threshold amount of business with the company.

24. The apparatus of claim 1, wherein the earnings estimates received from the bank are excluded based on the bank being involved over a threshold amount of time in a business relationship with the company.

APPENDIX B - EVIDENCE

No evidence is being submitted with this Appeal Brief (*i.e.*, this appendix is empty).

APPENDIX C - RELATED PROCEEDINGS

No prior or pending appeals, interferences, or judicial proceedings are known to Applicants, Applicants' legal representative, or assignee, which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal. Therefore, there are no copies of decisions rendered by a court or the Board to attach (*i.e.*, this appendix is empty).